

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

IN RE THE MATTER OF: ERIC ROBERTSON,

Respondent,

v.

STATE OF MISSOURI,

Appellant.

DOCKET NUMBER WD74623

Date: October 30, 2012

Appeal from:
Jackson County Circuit Court
The Honorable Kathleen A. Forsyth, Judge

Appellate Judges:
Division Two: Joseph M. Ellis, Presiding Judge, Alok Ahuja and Mark D. Pfeiffer, Judges

Attorneys:
Timothy A. Blackwell, Jefferson City, MO, for appellant.
Erika R. Eliason, Columbia, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

IN RE THE MATTER OF: ERIC ROBERTSON

v.

STATE OF MISSOURI,

WD74623

Before Division Two Judges: Joseph M. Ellis, Presiding Judge, Alok Ahuja and Mark D. Pfeiffer, Judges

Respondent,

Appellant.

Jackson County

Eric Robertson was incarcerated at the Northeast Correctional Center with a scheduled release date of September 12, 2011. The State filed a petition on August 18, 2011, alleging that, pursuant to §§ 632.480 to 632.513, RSMo (the “SVP Act”), Robertson was a sexually violent predator subject to involuntary commitment in the custody of the Department of Mental Health.

The State’s petition alleged that Robertson qualified for involuntary commitment based (in part) on the fact that he had previously been convicted of a “sexually violent offense” within the meaning of § 632.480(4), RSMo. To support this allegation, the State’s petition relied on Robertson’s June 5, 1995 conviction of deviate sexual assault in the first degree in the Circuit Court of Jackson County.

Robertson moved to dismiss, alleging that the offense to which he pled guilty in 1995 did not fall within the statutory definition of a “sexually violent offense.” The probate court granted Robertson’s motion. The State appeals.

AFFIRMED.

Division Two holds:

The SVP Act was enacted in 1998. Section 632.480(4) lists the offense of “deviate sexual assault” as a “sexually violent offense.” The State argues that the listing of “deviate sexual assault” in the definition of a “sexually violent offense” includes Robertson’s 1995 conviction of “deviate sexual assault in the first degree.” We disagree.

In 1998, when the SVP Act was passed, § 566.070, RSMo defined “deviate sexual assault” in a completely different way than the offense of “deviate sexual assault in the first degree,” of which Robertson was convicted. *See* § 566.070, RSMo 1986.

The State’s argument assumes that the term “deviate sexual assault” in § 632.480(4) is a generic classification, used to denote a category subsuming all degrees of an offense. To the contrary, we conclude that § 632.480(4) specifically and precisely identifies the offenses which render an individual eligible for commitment as a sexually violent predator, using the technical nomenclature of Missouri’s criminal statutes. “Deviate sexual assault in the first degree” is not one of the crimes identified as a “sexually violent offense” in § 632.480(4). We reach this conclusion for multiple reasons.

First, § 632.480(4) specifically identifies the degrees of an offense which constitute sexually violent offenses, in *every* case in which an offense had multiple degrees of severity as defined in 1998. The only offenses which are identified in § 632.480(4) without any “degree” qualification are offenses which *had no degree gradations* in 1998.

Moreover, although § 632.480(4) uses the seemingly generic terms “rape” and “sodomy,” it also lists – separately – various forms of “rape” and “sodomy” offenses, while omitting others. The separate listing of particular “rape” and “sodomy” offense would have been unnecessary if the terms “rape” and “sodomy” already included all subsidiary offenses. The legislature also listed offenses which no longer existed at the time of the passage of the SVP Act when it desired to include them in the definition of a “sexually violent offense,” yet it did not include “deviate sexual assault in the first degree” in that listing.

We must presume that the legislature was aware of the state of the law at the time it enacted the SVP Act, and that it was therefore aware that the crimes of “deviate sexual assault in the first degree” and “deviate sexual assault in the second degree” no longer existed. Moreover, the terms used in § 632.480(4) are technical terms having recognized legal meanings; we must presume that the legislature used the terms precisely and correctly, according to their technical meanings. We cannot rely on the broad remedial goals of the SVP Act to include Robertson’s 1995 conviction of deviate sexual assault in the first degree within the Act, when the language of the statute does not bear that construction. The simple fact is, Robertson was not convicted of an offense named in the SVP Act; the trial court was accordingly correct in holding that he was not subject to involuntary commitment under the Act.

Opinion by: Alok Ahuja, Judge

October 30, 2012

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